

REMARKS

This responds to the Final Office Action dated July 31, 2008.

Claim 1 is amended, no claims are canceled, and claim 17 added; as a result, claims 1-17 are now pending in this application.

§103 Rejection of the Claims

Claims 1-6 and 9-14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Russ et al. (U.S. Patent Application Publication No. 2004/0049790) in view of Su (U.S. Patent Application Publication No. 2002/0199190).

Claims 7, 8, 15 and 16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Russ et al. (U.S. Patent Application Publication No. 2004/0049790) in view of Su (U.S. Patent Application Publication No. 2002/0199190), as applied to claim 6, and further in view of Standridge et al. (U.S. Patent No. 6,618,353).

Applicant respectfully submits that the Office Action did not make out a *prima facie* case of obviousness for at least the following reasons. Even if combined, the cited references fail to teach or suggest all of the claimed elements of Applicant's invention.

In examining claims under 35 U.S.C. § 103(a), it is necessary for the Examiner to establish a proper *prima facie* case of obviousness before rejecting a claim as required by the Board of Patent Appeals and Interferences (BPAI). Such a rejection cannot be made if there is no evidence or suggestion in a cited reference of a claimed configuration. Ex Parte Katoh et al., Appeal 20071460, Decided May 29, 2007. Further, it is improper to reject a claim when there is no suggestion to combine the teachings of the cited references, except from using the Applicants' invention as a template through hindsight reconstruction of the Applicants' claims. Ex Parte Crawford et al., Appeal 20062429, Decided May 30, 2007. Moreover, a patent composed of several elements is not proved obvious merely by demonstrating that each element was, independently, known in the prior art. *KSR v. Teleflex*, 550 U.S. ___, 127 S. Ct. 1727 (2007). See also M.P.E.P. § 2142. Finally, rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational

underpinning to support the legal conclusion of obviousness. In re Kahn, 441 F.3d 977, 988 (CA Fed. 2006).

Russ describes a method of having a primary home communication terminal ("HTC") that is connected to a communications network provide a secondary HTC that is not connected to the communications network with access to carousel objects, such as a programming guide. (Russ paragraphs [0004], [0014], and [0015]) This is done by providing the secondary HTC with an index and having the secondary request desired objects from the primary HTC; the primary HTC then forwards the desired objects to the secondary HTC. (Russ paragraphs [0016] and [0031])

Claim 1 recites, in pertinent part:

using said application streamer to create a file directory structure based on said textual data, said file directory structure comprising at least OpenTV data file and at least one graphical data file;
(emphasis added)

The Office Action alleges that the limitation of "using said application streamer to create a file directory structure based on said textual data, said file directory structure comprising at least OpenTV data file and at least one graphical data file" is disclosed by Russ figure 4 and paragraphs [0028]-[0030]. Applicant respectfully disagrees.

Russ paragraphs [0028]-[0030] recite:

[0028] FIG. 4 is a flow chart illustrating a data carousel method 400 in accordance with one possible embodiment of the invention, among others. When a content server wishes to broadcast data via the communications network 130, the content server initially registers (block 401) with the BCS server 106. The BCS server 106 then creates a hierarchical file system (block 402) with all respective data available from each content server that is registered with the BCS server 106.

[0029] The BCS server 106 may start with a home directory such as, for example, "/BCS/", and each content server that has registered with the BCS server 106 may be assigned a respective directory in this hierarchical file system. For example, if the first content server 102 and the second content server 104 register with the BCS server 106, then, a first directory "/BCS/first content server" under the home directory "/BCS/" may be created for the first content server 102, and a second directory "/BCS/second content server" under the home directory "/BCS/" may be created for the second content server 104.

[0030] The first content server 102 and the second content server 104 may also create subdirectories under their respective directories. For example, the first content server may create a subdirectory "/BCS/first content server/first subdirectory/." Additionally, a content server may create and maintain a file under the respective directory for that server. For example, the first content server 102 may create a file under its respective directory (e.g., "/BCS/first content server/first file") or under a subdirectory (e.g., "/BCS/first content server/first subdirectory/first file").

The cited passage of Russ discusses the creation of a "hierarchical file system."

However, "each content server that has registered with the BCS server 106 may be assigned a respective directory in this hierarchical file system." This is not like the "file directory structure based on said textual data" as recited in claim 1. Instead, the "hierarchical file system" discussed in Russ is based on the content servers registered with the BCS, where each content server gets a directory.

Furthermore, Russ also does not disclose the limitation in claim 1 of "using said broadcast streamer to multiplex said nodes of said node tree with a regular broadcast stream resulting in an interactive data stream." The Office Action argues that this limitation is taught by Russ paragraph [0036]. Applicant respectfully disagrees. Russ paragraph [0036] recites:

[0036] FIG. 5 is a block diagram depicting a non-limiting example of a gateway device 500 in accordance with one embodiment of the invention. As shown in FIG. 5, the gateway device 500 is a DHCT that is configured to provide television services via a television (not shown) to which the gateway device 500 is coupled. The gateway device 500 includes a communications interface 522 for receiving signals (video, audio and/or other data) from the headend 110, at least one processor 524 for controlling operations of the gateway device 500, an output system 528 for driving the television 140 (FIG. 1), and a tuner system 525 for tuning to a particular television service to be displayed. The tuner system 525 includes, in one implementation, an out-of-band tuner for bi-directional quadrature phase shift keying (QPSK) data communication and a quadrature amplitude modulation (QAM) tuner (in-band) for receiving television signals. Carousels object that are broadcast by the BCS server (and/or other servers) are preferably received by the out-of-band tuner. In another embodiment, however, carousel objects may be received by the in-band tuner and/or by the out-of-band tuner, depending on a desired implementation. A receiver 526 receives externally-generated user inputs or commands from an input device such as, for example, a remote control device. A home network interface 590 provides a communications interface with a remote DHCT 600 (FIG. 1).

The cited paragraph of Russ merely discusses an example gateway device (set-top box) where “carousel objects may be received by the in-band tuner.” Receiving “carousel objects” through an in-band tuner is not the same as “to multiplex said nodes of said node tree with a regular broadcast stream” because “carousel objects” are not “nodes.”

In Russ, the “carousel objects” are “broadcast repeatedly (e.g., cyclically) and unilaterally (i.e., not in response to requests for the carousel objects) by a broadcast carousel system (BCS).” (Russ paragraph [0014]) Thus, “carousel objects” refer to the “directory index” created by the BCS server “of all data available from the plurality of servers” because it is “continually broadcast to the gateway device.” (Russ paragraph [0031]) The “directory index” is an “index of all data available from the plurality of servers wishing to broadcast such data to the gateway device.” (*Id.*) In contrast, in claim 1 of the present invention, a “node” is interactive content data. (In Russ, “carousel objects” are not content data because the content data is sent only if requested by the secondary HCT; see Russ paragraph [0033] and [0016])

In addition, “in-band” is not the same as “to multiplex.” In band refers to using the same communication pathway to transmit the “carousel objects” (see Russ [0036]). Multiplexing involves combining multiple sources of data.

As such, the Office Action fails to show that Russ in view of Su teaches or suggests every element of claim 1. Therefore, Applicant respectfully submits that there are substantial differences between what is claimed and what the Office Action contents to be shown in Russ in view of Su. Those differences are significant and non-obvious to a person of ordinary skill in the art at the time the application was filed. Thus, claim 1 is not rendered obvious by Russ in view of Su.

Independent claim 9 recites similar limitations as claim 1 and therefore should be allowable for at least the reasons presented above and Applicant respectfully requests notification of the same.

Claims 2-8 and 10-16 all depend from independent claims 1 and 9 and incorporate all elements therein. Accordingly, claims 2-8 and 10-16 are allowable for at least the reasons presented above and Applicant respectfully requests notification of the same.

Further, Applicant asserts that the additional elements of claims 2-8 and 10-16 further distinguish Russ in view of Su, and Applicant reserves the right to present arguments to this effect at a later date.

CONCLUSION


Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's representative at (408) 278-4058 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(408) 278-4058

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By 
Dag H. Johansen
Reg. No. 36,172

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 27 day of August, 2008.

John D. Gustav-Wrathall
Name Paralegal
Schwegman, Lundberg & Woessner


Signature